

Terrence O'Donnell, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005-5901

Dear Mr. O'Donnell:

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find *probable cause* to believe that a knowing and willful violation has occurred.

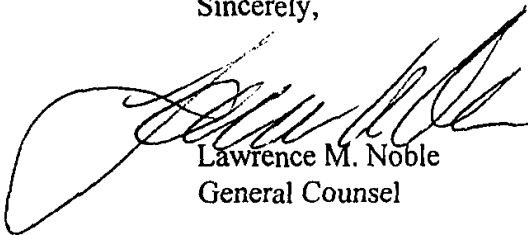
The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a *brief (ten copies if possible)* stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and *good cause must be demonstrated*. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Jose M. Rodriguez, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence M. Noble", is written over the typed name and title.

Lawrence M. Noble
General Counsel

Enclosure
Brief

00-04-295-3304

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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Haley R. Barbour

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MUR: 4250

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On June 2, 1998, the Federal Election Commission (the "Commission") found reason to believe Haley R. Barbour violated 2 U.S.C. § 441e by soliciting and accepting approximately one million six hundred thousand dollars in loan proceeds secured with foreign national funds on behalf of the Republican National Committee (the "RNC"). These funds were funneled through an organization closely associated with the RNC -- the National Policy Forum (the "NPF"). The Office of the General Counsel has conducted an investigation in this matter and is now prepared to recommend findings of probable cause to believe that Mr. Barbour knowingly and willfully violated 2 U.S.C. § 441e.

II. ANALYSIS

All available evidence establishes Mr. Barbour's direct involvement in the acquisition and acceptance of approximately \$1.6 million in foreign national funds only weeks prior to the 1994 Congressional elections.¹ This activity was conducted with the full knowledge that it was in direct contradiction of the foreign national prohibition of the Federal Election Campaign Act of 1971, as amended ("the Act"). See 2 U.S.C. § 441e.

¹ The Office of the General Counsel's recommendations are based on evidence gathered from numerous sources, including testimonial and documentary evidence produced by the minority staff of the Special Investigation of the Senate Committee on Governmental Affairs. All cited deposition testimony refers to depositions conducted by the Committee and all cited hearing testimony refers to hearings held by the Committee.

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The facts in this matter may be summarized as follows. In the summer of 1993, Mr. Barbour, the RNC's then chairman, established the NPF as an ostensibly independent, issue-oriented organization. However, from its inception in 1993, the RNC was the principal financier of the NPF's activities and, by the summer of election year 1994, the RNC was owed approximately \$2.1 million by the NPF. Desiring repayment in time for the 1994 elections, the RNC, at Mr. Barbour's direction and with his direct involvement, arranged the security necessary for the NPF to obtain a commercial bank loan to repay at least a portion of the outstanding balance. The security for the loan was knowingly obtained by Mr. Barbour from a foreign national source -- Young Brothers Development Company, Ltd. -- Hong Kong ("YBD -- Hong Kong"). Approximately \$1.6 million, of a total \$2.1 million borrowed by the NPF, was earmarked for the RNC and transferred by the NPF to the RNC's non-federal account upon disbursement of the loan proceeds in late October 1994 -- in time for the 1994 elections.

A. Applicable Law

The Act sets forth limitations and prohibitions on the type of funds which may be used in elections. Section 441e states that it shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value in connection with an election to any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.² 2 U.S.C. § 441e(a); 11 C.F.R. § 110.4(a).

² One district court recently held the foreign national prohibition at Section 441e applicable only to "contributions" for federal elections. See *US v. Trig*, Crim. No. 98-0029-1 (PLF) (D.D.C. Oct. 9, 1998). However, this lower court opinion failed to consider either the legislative history establishing the provision's broad scope or the Commission's consistent application of the prohibition to non-federal elections. See, e.g., MURs 2892, 3460, 4398 and 4638.

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, *inter alia*, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under Section 611(b), a "foreign principal" includes a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States. The Act further provides that resident aliens are excluded from the definition of "foreign national." See 2 U.S.C. § 441e(b)(2). The prohibition against foreign national contributions is further detailed in the Commission's Regulations at 11 C.F.R. § 110.4(a)(3). This provision states that a foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, with regard to such person's federal or non-federal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, state, or federal office or decisions concerning the administration of a political committee.

In addressing the issue of whether a domestic subsidiary of a foreign national parent may make contributions in connection with local, state or federal campaigns for political office, the Commission has looked to two factors: the source of the funds used to make the contributions and the nationality status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic corporation where the source of funds is from a foreign national, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1989-20, 2 Fed.

Election Camp. Guide (CCH) ¶ 5970 (Oct. 27, 1989); 1985-3, 2 Fed. Election Camp. Guide (CCH) ¶ 5809 (March 4, 1989); and 1981-36, 2 Fed. Election Camp. Guide (CCH) ¶ 5632 (Dec. 9, 1981). *See also*, A.O. 1992-16, 2 Fed. Election Camp. Guide (CCH) ¶ 6059 (June 26, 1992).

Even if the funds in question are from a domestic corporation, the Commission also looks at the nationality status of the decision makers. *See* A.O.s 1985-3 and 1982-10, 2 Fed. Election Camp. Guide (CCH) ¶ 5651 (March 29, 1982). The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals *by requiring that no director or officer* of the company or its parent, or any other person who is a foreign national, may participate in any way in the decision-making process regarding the contributions. This prohibition has been codified at 11 C.F.R. § 110.4(a)(3), as noted above.

Accordingly, it is clear that the Act prohibits contributions from foreign nationals, as well as contributions from domestic corporations *where either the funds originate from a foreign national source or a foreign national is involved in the decision concerning the making of the contribution.*

Moreover, for purposes of the Act's prohibitions, including the foreign national prohibition, a contribution includes any loan, and a loan is defined to include a guarantee, endorsement and any other form of security. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.7(a)(1)(i). Each endorser or guarantor shall be deemed to have made a contribution equal to that portion of the amount of the loan for which the endorser or guarantor agreed to be liable in a written agreement, or, where no such agreement exists, equal to the proportional amount of the total loan the endorser or guarantor bears to other endorsers or guarantors. 11 C.F.R. § 100.7(a)(1)(i)(C).

Finally, the Act addresses knowing and willful violations. 2 U.S.C. §§ 437g(a)(5)(C), (6)(C), and 437g(d). "Knowing and willful" actions are those that were "taken with full knowledge of all the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. FEC v. John A. Dramesi for Congress, 640 F.Supp. 985 (D.N.J. 1986).

B. Analysis

1. NPF and YBD -- USA

The loan transaction at issue was conducted through two organizations -- the NPF and Young Brothers Development -- U.S., Inc. ("YBD -- USA"). As previously noted, the NPF was established by the RNC's then chairman -- Haley R. Barbour. A practicing attorney since 1973, and a Senatorial candidate in 1982, Mr. Barbour has had extensive exposure to the Act ensuing from his broad political background, having served not only as RNC chairman but also as Executive Director of the Mississippi Republican Party, regional campaign director for President Ford's 1996 presidential campaign, and senior advisor to President Bush's 1988 presidential campaign.

On May 24, 1993, Mr. Barbour, along with other RNC officials, founded the NPF.³ From its inception, the NPF has maintained a very close relationship with the RNC. Approximately a week prior to its June 21, 1993 public debut, Mr. Barbour, in an internal RNC memorandum, notified RNC "Team 100" members of the NPF's formation, referring to the nascent organization as a "subsidiary" of the RNC. See Memorandum from Barbour to Team 100 Members of

³ The NPF's Articles of Incorporation disclose the involvement of two additional individuals associated with the RNC in the formation of the NPF. Donald Fierce appears as an initial director of the NPF at the same time as he was a salaried RNC employee and the RNC's then chief counsel, Michael A. Hess, appears as an NPF incorporator. See NPF Articles of Incorporation at Article Eight and Article Nine.

6/10/93, at 2. At the NPF's debut, Mr. Barbour, who was chairman of both the RNC and the NPF, noted the close cooperation he anticipated between the two organizations and announced the RNC's commitment to provide the NPF with the results of an extensive survey it would conduct to aid the NPF in launching its initial project. *See* Haley R. Barbour, NPF News Conference (June 21/93), at 2, transcript available in Federal News Service Washington Package. Also from the NPF's inception, the RNC began financially supporting this closely associated organization with transfers of funds characterized and reported by the RNC as loans and personally authorized by Mr. Barbour. *See, e.g.*, Baroody Deposition Vol.1, at 108.

The RNC provided an initial \$100,000 loan on May 26, 1993, and continued regularly providing loans until the end of 1996.⁴ By the time of the 1994 Congressional elections, the RNC had loaned the NPF nearly \$2,345,000; the NPF had repaid only a portion of this amount, leaving a \$2,145,000 balance. *See* RNC disclosure reports from 1993 June Monthly Report to 1994 September Monthly Report.

From its beginning, Mr. Barbour treated the NPF as unrestricted by the campaign finance laws, allowing the NPF to solicit and accept not only large corporate donations, but also donations from foreign national sources. Shortly after the NPF's formation, in late May or early June 1993, Michael Baroody, the NPF's first president, met privately with Mr. Barbour and discussed the potential foreign funding of the NPF. *See* Baroody Deposition Vol. 2, at 28-29. Despite Mr. Baroody's reservations regarding such sources, Mr. Barbour expressed his view that foreign money was a "promising" source of funding for the nascent NPF. *Id.* It also appears that

⁴ From its inception in 1993 through 1996, the NPF received nearly \$4.2 million in RNC loans to finance its activities. The NPF repaid \$1.9 million of this total amount, leaving an outstanding balance of approximately \$2.3 million.

a separate meeting was held during the same period to again discuss, in part, possible foreign funding of the NPF. Scott Reed, the RNC's then Chief Operating Officer prepared a meeting agenda dated June 2, 1993 addressed to Mr. Barbour, Mr. Baroody and Ken Hill, the NPF's then vice-president. *See* Memorandum from Reed to Barbour, Baroody and Hill of 6/2/93, *see also* Barbour Deposition at 20-22 and Reed Deposition at 152-153. The memorandum setting out the agenda is titled "NPF Action" and lists various aspects of the nascent organization's operation up for discussion at the anticipated meeting, including the potential foreign funding of the organization. *See id.* While neither Messrs. Reed nor Baroody specifically recalled this meeting during their depositions, Mr. Barbour has acknowledged that the meeting did occur and that the "legality" of foreign funding of the NPF was discussed, but he asserted that no decision was made at that time to pursue foreign funding sources. *See* Barbour Deposition at 22-24. It is clear that from the very first stages of the NPF's operation, Mr. Barbour viewed foreign funds as a promising source of revenue for the NPF. While it is unclear when the decision to actively seek foreign funding was first made, it is known that by the spring of election year 1994 the NPF was actively pursuing foreign funding.⁵ In 1994 the express purpose of the foreign money sought by Mr. Barbour was to enable the NPF to repay its now sizable debt of \$2,145,000 to the RNC in order to make the funds available for use in connection with the 1994 elections.

As noted, the transaction was performed domestically through YBD -- USA, with funds coming from the Hong Kong parent company. Incorporated in the State of Florida on

⁵ Mr. Barbour has testified that at some unspecified time after these initial discussions he approached three D.C. lobbyists who represented "non-domestic multinational corporations" seeking funding for NPF. *See* Barbour Deposition at 31-33. None of these solicitations yielded contributions. *See id.* However, in later years, the NPF received at least two foreign contributions. On July 18, 1995 the NPF accepted a \$50,000 contribution from Panda Industries, Inc. and on August 6, 1996 the NPF accepted a \$25,000 contribution from the Pacific Cultural Foundation. *See id.* at Exhibit 3 and 6.

October 14, 1991, YBD -- USA was formed as an investment vehicle for the purchase of a 50% interest in a Florida shopping center. *See, e.g.,* Young Deposition at 11. The corporation was fully funded by the Hong Kong parent; YBD -- Hong Kong purchased all 250,000 issued shares of YBD -- USA stock, at \$1 a share, and additionally provided the newly formed corporation a loan for approximately \$2.95 million for the shopping center investment. *See* YBD -- USA Corporate Data filed October 14, 1991. At the time of incorporation, Ambrous T. Young was named a director of the corporation, Benton Becker, counsel to Mr. Young, was named Secretary/Treasurer of the corporation, and Richard Richards, an associate of Mr. Young's and a former RNC Chairman, was named president of the corporation. *See id.* The corporation established two bank accounts, one in Coral Gables, Florida where the corporate office was located, and another in Washington, D.C. *See id.*

The subject investment property was held by a individual named Alex Courtelis. Mr. Courtelis was at that time a Florida land developer and chairman of the RNC's Team 100 major donor program. *See* Becker Deposition at 10-11. Because of conflicting value appraisals concerning the investment, the real estate deal was never finalized. *See, e.g.,* Young Deposition at 11-13. However, during the investment negotiations, Mr. Courtelis solicited Mr. Young, who at that time was a United States citizen, for a Team 100 membership.⁶ *See id.* at 13. Mr. Young acquiesced to the solicitation and contributed \$100,000 from the funds loaned by the parent

⁶ A wealthy Hong Kong businessman, Mr. Young renounced his United States citizenship effective December 29, 1993, subsequent to this contribution, but prior to the transaction at issue in this matter.

company for the investment.⁷ *See* Becker Deposition at 17. The balance of the funds, approximately \$2.85 million, were transferred back to the Hong Kong. *See id.* at 21. Despite exploring various investment opportunities in the ensuing years, YBD -- USA made no investments, and retained no significant assets, until the fall of 1994 when Mr. Young transferred \$2.1 million from the Hong Kong parent company to guarantee the loan at issue in this matter.⁸

2. Loan Negotiations

In the spring of 1994, with an outstanding debt owed by the NPF to the RNC in excess of \$2 million and the 1994 Congressional elections looming on the horizon, Mr. Barbour began pursuing alternative funding sources that would allow the NPF to repay its debt.⁹ Already having determined that foreign funds presented a promising revenue source for NPF, Mr. Barbour tasked an individual named Daniel B. Denning with seeking foreign national funding for the NPF. *See* Baroody Deposition Vol. 2, at 33 and Senate Testimony at 207-208.

⁷ The contribution was split at Mr. Courtelis' direction, \$75,000 going to the Republican National State Elections Committee and \$25,000 going to the Republican Party of Florida. *See, e.g.,* Becker Deposition at 19-20. Mr. Courtelis also suggested that YBD -- USA be the named Team 100 member so as to allow any individual associated with the corporation to attend Team 100 events. *See, e.g., id.* at 20. Subsequent to this initial contribution, YBD-- USA made an additional \$2,400 contribution in 1992 in order to attend that Republican National Convention and a \$25,000 contribution in 1993 as part of its Team 100 dues. *See, e.g., id.* at 21-23. Although these early contributions were in apparent violation of the Act, because the statute of limitations at 28 U.S.C. § 2462 would bar the Commission from seeking civil penalties relating to such violations the Office of the General Counsel makes no recommendations concerning these contributions.

⁸ YBD -- USA has not held any significant assets during the period at issue, and has realized only modest savings and rental income. In 1993, YBD -- USA earned only \$5,955 in interest income from funds loaned by the parent company. *See* Becker Affidavit dated September 2, 1997, at 2-3. Similarly, in 1994, YBD -- USA earned only \$3,653 in interest income and \$16,250 in rental income from a leased D.C. condominium. *See id.* at 3.

⁹ It appears from internal loan documents that the NPF was having difficulties raising sufficient funds to repay the RNC loans timely. The original promissory note for the RNC loans matured on April 30, 1994. *See* "Demand Promissory Note In Connection With Agreement Between The Republican National Committee And The National Policy Forum" dated May 1, 1993. Prior to the transaction at issue in this matter, the NPF twice extended the note's maturity date, first to August 31, 1994 and later, when the NPF could still not meet its obligations, to December 31, 1994. *See* "Addendum No. 2" and "Addendum No. 3" to "The Loan Agreement of May 1, 1993, Between The National Policy Forum And The Republican National Committee" dated April 30, 1994 and June 28, 1994, respectively.

The mechanism to allow Mr. Denning to perform this task had been put into place by Mr. Barbour earlier in the year. Mr. Denning, who had previously worked for President Reagan's administration in various capacities and who had been deputy manager of the 1984 Republican convention, was hand picked by Mr. Barbour in approximately January 1994 as the NPF's Chief Operating Officer ("COO"). *See Baroody Deposition Vol. 2, at 13-15 and Senate Testimony at 207, see also, Denning Deposition at 12-15.* One of Mr. Denning's duties in this capacity was fundraising, and, unlike Mr. Baroody, Mr. Denning presumably had no reservations about funding the NPF with foreign national funds. *See Denning Deposition at 27.*¹⁰ Indeed, upon hire, Mr. Denning informed Mr. Baroody that he had been specifically asked by Mr. Barbour to explore foreign funding for the NPF, although it appears that Mr. Denning did not actively pursue this option until spring of 1994. *See Baroody Deposition Vol. 2, at 32-33 and Senate Testimony at 208.* Notwithstanding that Mr. Baroody as NPF president was technically Mr. Denning's superior, Mr. Denning reported directly to Mr. Barbour. *See Denning Deposition at 15-16.*

In April 1994, three months after being hired as COO, Mr. Denning approached Fred Volcansek, a former Bush administration employee and international business consultant, to help identify possible funding sources. *See Volcansek Deposition at 30-32.* Mr. Volcansek was presumably approached because of his expertise and contacts in the international business community. *See Volcansek Senate Testimony at 57-58.* Mr. Volcansek then met directly with Mr. Barbour. *See Barbour Deposition at 60-61.* Once retained, Mr. Volcansek then met with

¹⁰ Although Mr. Denning in a separate portion of his deposition testifies that he had no "personal responsibility" for fundraising, as will be discussed, Mr. Denning was specifically asked by Mr. Barbour to explore foreign funding for the NPF and subsequently became directly involved in obtaining the foreign funds at issue in this matter. *See Denning Deposition at 43-44.*

Mr. Denning and Donald Fierce, the RNC's then chief strategist and a confidant of Mr. Barbour, to discuss potential ways to fund the NPF. Although a named Director of the NPF, Mr. Fierce represented the RNC's interests in the planned transaction, assuring that sufficient funds were raised to substantially repay the outstanding debt.¹¹ *See Volcansek Deposition at 40.*

As a representative of the RNC and a trusted ally of Mr. Barbour, Mr. Fierce took an active role in these initial discussions, establishing the purpose for the anticipated funds and the means of obtaining them. Mr. Volcansek testified that during these early meetings Mr. Fierce directly explained to him that the purpose at that time behind seeking funding for the NPF was to allow repayment to the RNC in time for use in the 1994 elections. *See Volcansek Deposition at 40-41, 84 and Senate Testimony at 27-30.* He also testified that Mr. Fierce was the first individual to suggest seeking a foreign source of funds. *See Volcansek Deposition at 49.* Thus, the availability of funds for the RNC to use in the 1994 elections was the clearly understood purpose behind this election year solicitation effort. Both Mr. Denning and Mr. Reed, the RNC's then Chief Operating Officer, acknowledged in their testimony a similar understanding of the purpose for seeking foreign funding. *See Denning Deposition at 160, Reed Deposition at 116-117.* In fact, when asked why he had an interest in seeing the NPF repay its debt, Mr. Reed candidly testified that it was "[b]ecause it was a considerable amount of money. We were moving up on an election cycle. It's fairly straightforward, I think." *Reed Deposition at 116-117.* Mr. Reed explained: "I wanted every dollar available to me so I could make decisions and recommendations on how we were going to win more elections." *Id.*

¹¹ Although a named NPF Director, Mr. Fierce appears to have had no direct role in the NPF's activities. Indeed, to the extent that he was involved in general discussions about the NPF's mission, he was viewed by Mr. Baroody, the NPF's then president, as a member of the RNC's staff. *See Baroody Deposition Vol. 1, at 50-51, and Vol. 2, at 17.*

Having established the need for timely repayment of the NPF's loans, Messrs. Denning, Fierce and Volcansek went about the task of choosing the mechanism for repayment and identifying sources willing to provide the repayment funds. In conversations between these individuals it was agreed that a loan guarantee would be the most expeditious funding vehicle for the NPF, assuring the funds availability prior to the election. *See Volcansek Deposition at 44.* Mr. Volcansek identified several potential sources for the loan guarantee. *See Id. 51-59.* Between May and June 1994, Messrs. Volcansek, Denning and Fierce decided to contact one of the identified sources. *See Denning Deposition at 151-152.* This individual was Ambrous T. Young -- a wealthy Hong Kong businessman.

Accordingly, Mr. Volcansek contacted Steve Richards, an associate of Ambrous Young, seeking a loan guarantee in the amount of \$3.5 million.¹² *See Volcansek Deposition at 67.* Following this initial solicitation, in approximately June 1994, Mr. S. Richards visited Mr. Young in Hong Kong to discuss the loan guarantee proposal. *See Id. at 77.* After this preliminary discussion in the summer of 1994, Mr. Young apparently agreed to entertain the loan guarantee request. *See Facsimile from S. Richards to Denning of 7/20/94.*

Shortly after this initial contact, and in apparent response to Mr. Young's expressed interest, Mr. Barbour directly contacted Richard Richards, the former RNC chairman, concerning the proposed loan guarantee. In preparation for this call, Mr. Volcansek drafted a script of talking points for Mr. Barbour derived from conversations with Messrs. Denning and Fierce. *See Talking Points for Haley Barbour dated 7/28/94, see also, Becker Deposition at 29, Volcansek*

¹² The requested amount was determined by Messrs. Volcansek, Denning and Fierce based on the need to repay the NPF's \$2.1 million debt to the RNC while retaining sufficient funds to maintain operations for the remainder of 1994. *See Volcansek Testimony at 28; Denning Deposition at 173.*

Senate Testimony at 36. The document instructs Mr. Barbour to mention the ongoing discussions regarding how Mr. Young and his family "might be of help to our efforts during the upcoming mid-term election," to discuss electoral possibilities for Republicans in the upcoming elections, to propose a loan from Mr. Young's family to the NPF "which will allow us to free up the money previously advanced to the NPF and make it available for the elections," and to remind Mr. R. Richards of an apparently earlier invitation to host Mr. Young in Washington, D.C. *Id.* While Mr. Barbour has no specific recollection of using the document, it appears from Mr. R. Richards' recollection of the conversation that many of the same points were raised by Mr. Barbour. *See generally*, Barbour Deposition at 62-65. According to Mr. R. Richards, Mr. Barbour called to explain the electoral opportunities for the Republican party in the upcoming elections and the consequent need for the NPF to repay its debt to the RNC. *See* R. Richards Senate Testimony at 69-71. Mr. Barbour explained that the timing was "urgent" because of the upcoming elections and requested that Mr. R. Richards talk with his client, the "well-to-do Chinese fellow in Hong Kong," (*i.e.*, Mr. Young) about providing the loan guarantee. *Id.* at 69 and 106-107.

Following this conversation, in approximately early to mid August, Messrs. R. Richards and Volcansek met with Mr. Young in Hong Kong. *See* Volcansek Deposition at 78-79 and 91-93. During this meeting, Mr. Volcansek explained to Mr. Young the NPF debt situation and the need for a loan guarantee to help the RNC gain repayment so as to allow the RNC "to use that money in the '94 election cycle." *Id.* at 92-93. It appears that Mr. Young was also provided with a written proposal prepared by Mr. Volcansek outlining the requested loan guarantee. *See* Facsimile from S. Richards to Becker of 8/15/94. Consistent with Mr. Barbour's earlier conversation with Mr. R. Richards, the proposal clearly revealed the need to regain the loaned

RNC funds for use in the 1994 elections. In addition to providing an overview of the NPF's structure and activities and offering Mr. Young a participatory role in the NPF, the proposal discussed the upcoming mid-term elections and the Republican opportunity to take over the House of Representatives, and the RNC's consequent need to "support substantially over 90 of these races." *Id.* The proposal then requested a loan guarantee for \$3.5 million to allow repayment, noting that "[t]he timing of this effort is crucial," and requesting that the loan be arranged within the "next two weeks." *Id.* An updated copy of this document was provided to Benton Becker, domestic counsel to Mr. Young, on August 15, shortly after the trip and in anticipation of the RNC calling him concerning the transaction. *See id.*

A Washington, D.C. meeting between Messrs. Barbour and Young was ultimately scheduled for August 27, 1994. On that date, these two individuals met at a restaurant to discuss the loan guarantee. *See Young Deposition at 32; Barbour Senate Testimony at 141-142.* Also in attendance were all the principals involved in soliciting the loan guarantee -- Messrs. R. Richards, S. Richards, Denning, Fierce, and Volcansek. *See Denning Deposition at 153, Young Deposition at 35, Barbour Deposition at 69-70.* Although others attended the dinner, it appears that the loan discussions occurred primarily between the two principals -- Messrs. Barbour and Young. According to Mr. Young's deposition testimony, at this dinner Mr. Barbour was directly informed that the requested collateral would be coming from YBD -- Hong Kong. Specifically, Mr. Young informed Mr. Barbour that he needed further information concerning the proposed transaction to present to the Hong Kong board of directors for their approval. *See Young Deposition at 35.* Mr. Barbour, however, has claimed no recollection of this aspect of the conversation. *See Barbour Senate Testimony at 142-143.*

Following the dinner meeting, Mr. Volcansek wrote a memorandum marked "Urgent" to Messrs. Fierce and Denning explaining the need to quickly follow-up on Mr. Barbour's apparent decision to personally draft a "white paper" describing the NPF, and a personal letter to Mr. Young. *See* Memorandum titled "Urgent" from Volcansek to Fierce and Denning of 8/29/94 (emphasis in original). In the memorandum, Mr. Volcansek notes that Mr. R. Richards believes Mr. Young will agree to the guarantee proposal, but that Mr. Barbour's further personal involvement is necessary to guarantee Mr. Young's commitment. *See id.* Accompanying the memorandum was a separate memorandum, dated the same day and addressed to the same individuals, laying out the various issues Mr. Barbour should address in the "white paper" and in his letter to Mr. Young. *See* Memorandum from Volcansek to Fierce and Denning of 8/29/98. Among the issues to be addressed in the "white paper" are again the requested loan guarantee, the critical timing of the loan guarantee, and the Republican prospects in the upcoming November elections. *See id.*¹³

Shortly after the dinner and Mr. Volcansek's memorandum, on August 30, 1994 Mr. Barbour wrote Mr. Young at his Hong Kong address. *See* NPF letter from Barbour to Young of 8/30/94 and Barbour Deposition at 68-69. In this letter, Mr. Barbour expresses the NPF's interest in having Mr. Young contribute an article on China policy for the NPF's publication "Commonsense," a proposal first brought up during the D.C. dinner meeting. Following the proposals in Mr. Volcansek's memorandum, accompanying the letter was the requested "white paper" on the NPF, soliciting a \$3.5 million loan guarantee to allow retirement of RNC debt.

¹³ There are two slightly different versions of this memorandum. Although it is not known which version was provided to Messrs. Fierce and Denning, the two versions do not materially differ. Further, both versions mention that Mr. Becker was to draft the "white paper." Although as is next discussed, a "white paper" concerning the NPF was in fact provided by Mr. Barbour to Mr. Young, Mr. Becker has testified that he did not in fact draft the document. *See* Becker Deposition at 33.

explaining the anticipated Republican gains in the upcoming mid-term elections, and noting the necessity for the loan guarantee because fundraising for the NPF would not be possible during the election period. *See id.*¹⁴

On the same date Mr. Barbour wrote Mr. Young's local counsel, Benton Becker, on RNC letterhead, offering his commitment as Chairman of the RNC to secure Mr. Young's guarantee by seeking remuneration from the RNC in the event of default. *See* Letter from Barbour to Becker of 8/30/94. According to Mr. Becker, this commitment resulted from his conversations with Mr. Norcross during which he initially requested that the RNC serve as a formal guarantor on the loan. When the RNC declined to serve in this capacity, Mr. Becker requested some less formal form of protection for his client and in response received Mr. Barbour's commitment. *See* Becker Affidavit of 9/2/97, at 4-5, Becker Deposition at 38-40. In a separate communication, Mr. Barbour made the same commitment to Mr. R. Richards. *See* R. Richards Deposition Vol. 1, at 26.

In response, on September 9, 1994, Mr. Young wrote Mr. Barbour from Hong Kong noting his interest in supporting the party, but explaining his preference for a direct contribution to the Republican party rather than the loan guarantee. Mr. Young further explained that, should a direct contribution not be possible, he would be willing to post only \$2.1 million as a

¹⁴ Moreover, on the same date Mr. Barbour also appears to have sent a separate, more personal, letter to Mr. Young at his Hong Kong address, this time on RNC letterhead. This letter, stamped received by YBD -- Hong Kong on September 2nd, addresses Mr. Barbour's anticipated travel to Korea and his desire to have Mr. Young join him on the trip. *See* RNC letter from Barbour to Young of 8/30/94. The Commission has obtained a copy of only the first page of this separate communication; consequently, it is unclear what other issues may have been addressed in this letter.

guarantee, the amount "urgently needed and directly related to the November Election" (*i.e.*, the amount of the NPF's debt to the RNC). *See* Letter from Young to Barbour of 9/9/94.¹⁵

Following these communications, Mr. Young agreed to provide the \$2.1 million collateral and apparently instructed his son, Steve Young, to personally inform Mr. Barbour of the agreement. *See id.* at 2, Letter from Steve Young to Becker of 9/6/94 and Letter from Steve Young to R. Richards of 9/8/94. In response, on September 19, 1994, Mr. Barbour again wrote Mr. Young in Hong Kong, thanking him for agreeing to the proposal. *See* Letter from Barbour to Young of 9/19/94. After Mr. Young's agreement to provide the requested collateral, Mr. R. Richards separately contacted Mr. Barbour, again informing him of Mr. Young's acquiescence to the loan guarantee proposal and explaining that the transaction would be conducted through Mr. Young's domestic corporation YBD -- USA with funds transferred from the Hong Kong parent. *See* R. Richards Senate Testimony at 72-73.

The above evidence clearly establishes that the loan guarantee transaction initiated by Mr. Barbour was intended to allow the RNC to recoup the funds loaned to the NPF so that they would be available for use in the 1994 elections. This same evidence also demonstrates that Mr. Barbour had full knowledge of the foreign source of the collateral provided through YBD -- USA.

Mr. Barbour was involved in all aspects of the acquisition of the foreign national collateral. Mr. Barbour personally selected the two individuals principally responsible for securing the foreign national funding -- Messrs. Denning and Fierce. From the very first stages

¹⁵ In his deposition testimony, Mr. Barbour has claimed not to have received this letter. *See* Barbour Deposition at 78-79. However, in their separate testimony Messrs. Young, Becker and R. Richards all suggest that the correspondence did occur. *See* Young Deposition at 38, Becker Deposition at 41 and R. Richards Deposition at 31-32.

of the transaction at issue, it was Mr. Barbour's trusted confidant, Mr. Fierce, who established the RNC's intent to seek foreign funding to finance repayment of the NPF's debt and thus guarantee the availability of these funds to the RNC for use in the elections. The various solicitation efforts, including those directly conducted by Mr. Barbour, consistently expressed this purpose. Indeed, the direct involvement of Messrs. Fierce and Denning in the negotiations shows that the loan transaction, although conducted through the NPF, was in fact orchestrated by the RNC. This is highlighted by the exclusion of Mr. Baroody, the NPF's then president, from the transaction. Because of his objection to funding the NPF with foreign sources, Mr. Baroody presented an obstacle to the RNC and was in essence relieved of his fundraising responsibilities by Mr. Barbour with the appointment of Mr. Denning as COO.¹⁶

Mr. Barbour clearly knew the foreign source of the funds that were ultimately provided as collateral. Based on the evidence discussed above, Mr. Barbour appears to have been directly informed by both Messrs. Young and R. Richards of the foreign national source of the collateral. Indeed, all of Mr. Barbour's written communications with Mr. Young were addressed to a Hong Kong address, and, likewise, the communication received by Mr. Barbour from Mr. Young originated in Hong Kong. Consequently, there is no question that Mr. Barbour had every reason to know the foreign source of the collateral.

In fact, it appears that Mr. Barbour may have been additionally informed of the foreign source of the collateral by both Messrs. Volcansek and Denning. According to Mr. Volcansek, he directly informed Mr. Barbour of the foreign source of the collateral during a meeting at the

¹⁶ It appears Mr. Baroody's objection to foreign funding led to his resignation from the NPF on August 1, 1994, during the period of the solicitation at issue. In resigning from the NPF, Mr. Baroody wrote Mr. Barbour noting that two of the factors leading to his resignation were Mr. Barbour's "fascination" with securing foreign national funding for the NPF and the close connection between the NPF and the RNC. See Memorandum from Baroody to Barbour of 6/28/94. Mr. Baroody was succeeded as NPF President by John Bolton.

RNC attended by Messrs. Barbour, Fierce and Denning sometime prior to October 1994. *See* Volcansek Deposition at 107-109. Mr. Volcansek notes that the source of the collateral was common knowledge during this period. *See id.* at 106. Mr. Barbour's calendar for the month of September 1994 confirms that that a meeting was scheduled with Messrs. Volcansek, Fierce and Denning for September 13, at 5:15 p.m. *See* "Haley Barbour's Monthly Calendar" for September 1994. Directly following this meeting, Mr. Barbour was scheduled to meet with Mr. Young's son, Steve Young, presumably to further discuss the loan guarantee. *See id.*

Mr. Denning too informed Mr. Barbour of the apparent foreign funding for the transaction. According to Mr. Denning, during the guarantee negotiation period he learned that Mr. Young's citizenship was in transition, and believes he informed Messrs. Barbour, Fierce and Reed of this.¹⁷ *See* Denning Deposition at 146-148. Mr. Barbour has in fact acknowledged learning that Mr. Young had once been a U.S. citizen (and, thus, presumably learning that he was no longer), but claimed that he did not consider the source of the information determinative. *See* Barbour Senate Testimony at 231-232. It does not appear, however, that Mr. Barbour made any efforts to confirm the information, perhaps because he already knew Mr. Young was a foreign national.

Because of the acknowledged purpose for the loan transaction, Mr. Barbour's understanding that the loan proceeds would be secured with foreign national funds, and his understanding that the individual responsible for agreeing to the guarantee, Mr. Young, was potentially a foreign national, the solicitation of the loan collateral and its acceptance on behalf of the RNC of the loan proceeds secured with the YBD -- USA collateral clearly constituted a

¹⁷ As noted, Mr. Young in fact had already renounced his US citizenship -- effective December 29, 1993.

violation of Section 441e. However, Mr. Barbour, who is versed in the FECA, proceeded with the loan transaction despite this clear violation.

3. Loan Transaction

Once Mr. Young agreed to provide the \$2.1 million collateral to secure a commercial loan to the NPF, Mr. Becker began discussions regarding the structure of the loan guarantee with Mr. Norcross, then RNC General Counsel, and with an outside law firm retained by the NPF -- Baker & Hostetler. Knowing that the funds for the collateral would originate from a foreign source, and apparently concerned that this aspect of the transaction could carry some FECA implications, Mr. Becker sought assurances from both Mr. Norcross and outside counsel that the transaction was legal under the Act. *See* Becker Affidavit of 9/2/97, at 6-7, *see also*, Memorandum from Becker to Young of 9/23/94 (citing need for opinion letter from NPF counsel and discussing foreign national prohibition).¹⁸ In response, on October 6, 1994, E. Mark Braden, outside counsel, provided Mr. Becker with an opinion letter erroneously concluding that, because the repayment from the loan proceeds would not be made to a political committee, the transaction would not be in conflict with the Act.¹⁹ *See* Letter from Braden to Becker of 10/6/94.

¹⁸ Mr. Volcansek also directly approached Mr. Norcross concerning the legal implications of the transaction. Mr. Norcross informed Mr. Volcansek that the transaction was "perfectly legal and appropriate." *See* "Statement of Frederick W. Volcansek, Sr. Before The United States Senate Committee On Governmental Affairs Special Investigations" dated 7/24/97, at 9-10.

¹⁹ Citing 11 C.F.R. § 100.5, counsel apparently concluded that because the repayment was to the RNC's non-federal account, it was not to a political committee as defined in the Act and therefore not restricted. Counsel termed the relationship between the RNC's non-federal and federal accounts as one of affiliation, with the non-federal accounts having an affiliated political committee (*i.e.*, the federal account). The opinion letter, however, did not directly address the issue of the foreign national source of the collateral. While there is no direct evidence of counsel's knowledge concerning the foreign national source, there is considerable circumstantial evidence suggesting that the source may have been an aspect of the transaction known to counsel. Mr. Becker's September 23, 1994 letter to Mr. Young regarding the need for an opinion letter specifically discussed the Act's foreign national prohibition, suggesting that this was one aspect of the transaction necessitating assurances from NPF counsel and presumably communicated to counsel. *See* Letter from Becker to Young of 9/23/94, at 2-3. Similarly, Mr. Denning has testified that the NPF retained outside counsel because the foreign source was a

Mr. Becker also sought assurances from the NPF that the loan would be satisfied. In response, on October 7, 1994, Mr. Denning provided Mr. Becker with information disclosing that NPF had approximately \$1.1 million in pledges through September 1995 not yet received and that the NPF had historically experienced a 100% collection rate on such pledges. *See Letter from Denning to Becker and Young of 10/7/94.*

Once all assurances were provided and the details of the transaction were resolved, Mr. Barbour once again wrote Mr. Young in Hong Kong, this time thanking him for his "crucial assistance" at "such a critical time." *See Letter from Barbour to Young of 10/10/94.* The following day a formal loan application was filed with Signet Bank. *See "Signet Commercial Loan Submission Sheet" dated 10/11/94.*²⁰ On the same day, YBD -- Hong Kong wire transferred \$2.5 million to YBD -- USA in the form of a loan to the domestic corporation. *See Becker Affidavit dated 9/2/97, at 7.* The funds were received by YBD -- USA the following day into its Coral Gables, Florida, bank account. *See id.*

The NPF loan was finalized by an agreement dated October 13, 1994. *See "Credit and Security Agreement between National Policy Forum and Signet Bank/Virginia" dated 10/13/94 ("Credit and Security Agreement").* Under the loan documents, Signet Bank provided a loan in the amount of \$2.1 million to the NPF. *See id.* at Article I, section 1.1. A portion of the loaned amount, \$1.6 million, was explicitly designated for repayment of the NPF's outstanding debt to

"potential" issue in the transaction. *See Denning Deposition at 217-218.* This evidence, especially Mr. Denning's testimony, strongly suggests that outside counsel may have been informed of the foreign source of the collateral.

²⁰ Interestingly, the Signet loan application describes the NPF as a "research affiliate" of the RNC. *See "Signet Commercial Loan Submission Sheet" dated 10/11/94.*

the RNC.²¹ *See id.* at Article I, section 1.3. The loan called for ten quarterly principal payments of \$191,000 with the first payment due on April 30, 1995, and subsequent quarterly payments due on the last days of July, October, January, and April through July 1997. *See id.* at Article I, section 1.4(a). The terms also called for a final principal payment of \$190,000 on October 31, 1997 -- the maturity date. *See id.* Interest was also to be paid in eleven installments, corresponding to the principal payment schedule, except that an initial interest payment was due on January 31, 1995. *See id.* at Article I, section 1.4(b).

The loan was backed by eleven separate Signet Bank Certificates of Deposit ("CDs"), each in the approximate face amount of \$192,000, with maturity dates coinciding with the loan repayment schedule. *See* Becker Affidavit dated 9/2/97, at 7, *see also*, Credit and Security Agreement at Article II. The corresponding CD would be released upon receipt of the installment payment. *See id.* On the date the loan was executed, YBD -- USA wire transferred \$2.1 million to Signet Bank for purchase of the CDs, using the foreign funds received from the parent corporation the previous day. *See* Becker Affidavit dated 9/2/97, at 7. Upon satisfaction of each installment, and the corresponding release of the CD, the principal and interest earned on the CD was to be directly wired by the bank to the YBD -- Hong Kong. *See* Letter from Becker

²¹ Because of the NPF's debt to the RNC, the RNC was made a party to the loan, executing a Subordination Agreement on October 13, 1994. *See* RNC "Subordination Agreement" dated 10/13/98. Under the terms of the agreement the RNC subordinated all debt owed by the NPF, except for the \$1.6 million repayment designated in the loan documents, to the NPF's repayment of the bank loan. *See id.* As a party to the loan, the RNC presumably received copies of various executed loan agreements. The full loan agreement closing package as retained by the lender contained information clearly disclosing that YBD -- USA was wholly owned by YBD -- Hong Kong. Moreover, it appears that the NPF received a copy of the full loan package. Mr. Barbour has testified that in 1997, in response to the allegations concerning this transaction, the NPF reviewed the loan package disclosing YBD -- Hong Kong's full ownership of YBD -- USA. *See* Barbour Deposition at 130-132. However, Mr. Barbour claims that this was the first time he became aware of YBD -- USA's ownership. *See id.*

to Stevens of 11/17/94. The receipt of these funds by YBD -- Hong Kong was to be treated as partial repayment of the YBD -- USA loan used to purchase the CDs.

The loan to the NPF was disbursed by Signet Bank on October 17, 1994. Prior to disbursement, Steven S. Walker, the NPF's then Comptroller, wrote Signet Bank explaining that the RNC did not desire repayment until October 20, 1994, the day after the deadline for disclosing receipts in the RNC's 1994 12 Day Pre-General Election Report, and asking that the repayment funds, \$1.6 million, be deposited into the NPF's savings account to be held until October 20th.²² See Letter from Walker to Killoren of 10/13/94. On that date, the NPF transferred the full \$1.6 million to the RNC in two separate checks for \$1,525,000 and \$75,000. See NPF check number 2545 and number 2546. Withholding transfer of the repayment funds until October 20th guaranteed that the transaction would not become public until after the 1994 elections.

4. Forgiveness Requests

After the elections, the NPF began making payments on the Signet loan. The NPF made an initial payment of \$12,871.72 on March 31, 1995, presumably for accrued interest, and three quarterly payments of approximately \$200,000 each on April 28, July 31 and October 31, 1995. However, it appears that the NPF's repayments to the bank were financed by additional RNC loans to the NPF approved by Mr. Barbour -- in effect causing the RNC to make the repayments. See Bolton Deposition Vol. 1, at 62-63 and Vol. 2, at 46, *see also*, Internal Signet Bank Memorandum from Bredin to Credit File of 2/29/96, at 2.

²² The FEC filing date for the 1994 pre-general report was October 27, 1994; all contributions received by the RNC between October 1st and October 19th were required to be reported in the pre-election report.

During this repayment period, Mr. Barbour began seeking Mr. Young's permission to allow Signet Bank to seize the collateral *in satisfaction of the NPF debt*. Although the available evidence does not firmly establish when such requests began, it is known that sometime during the summer of 1995, Mr. Barbour again visited Mr. Young in Hong Kong, this time seeking forgiveness of the existing debt. *See Young Deposition at 56, and Barbour Deposition at 93.* The meeting took place in Hong Kong harbor on YBD -- Hong Kong's corporate yacht. *See Young Deposition at 55.* According to Mr. Young's testimony, Mr. Barbour asked Mr. Young to forfeit the loan collateral by allowing Signet Bank to seize that collateral, thereby having YBD -- Hong Kong absorb the cost of repayment of the NPF loan. *See id.* at 55- 57. Mr. Young notes that at that time he declined the request, explaining that, because the guarantee was from the Hong Kong corporation, *it could not easily be forfeited* without a legitimate business reason, as the corporation faced annual audits by the Hong Kong authorities and such an action would raise questions. *See id.* at 57-58. Again, Mr. Barbour has claimed no recollection of being informed of the Hong Kong source of the loan guarantee during this meeting.²³ *See Barbour Deposition at 119-120.* However, consistent with Mr. Young's general recollection of the yacht conversation, Mr. R. Richards has testified that, after the meeting, Mr. Young informed him of Mr. Barbour's

²³ In fact, Mr. Barbour has claimed that Mr. Volcansek began forgiveness discussions prior to the loan being finalized and that Mr. Young at that time was favorably disposed to forgiving some or all of the loan. *See Barbour Senate Testimony at 95-97.* However, Mr. Volcansek has testified that he was not involved in any forgiveness discussions prior to the loan being finalized. *See Volcansek Deposition at 95.* Both Messrs. R. Richards and Denning have testified that they were not aware of any forgiveness discussion prior to the loan. *See R. Richards Senate Testimony at 75, and Denning Deposition at 270-271 (testifying that he first learned of forgiveness discussions in late 1995).*

forgiveness request and his response that he “would like to help,” but he needed some “justifiable reason” for doing so. *See R. Richards Deposition Vol. 1, at 40.*²⁴

Thus, Mr. Barbour was again informed of the foreign source of the collateral. Yet, as will be next discussed, after the RNC benefited from the loan proceeds, Mr. Barbour caused the remaining collateral to be seized by the bank in satisfaction of a substantial portion of the outstanding loan.

5. Allonge

Despite this initial refusal, it appears that Mr. Barbour continued seeking the forfeiture of the posted collateral. At the beginning of the 1996 election year the RNC, through Mr. Norcross, informed Mr. Becker that the NPF would not be making the January 1996 quarterly payment on the Signet Bank loan. *See Becker Deposition at 56-59, see also Young Deposition at 60-61.* According to Mr. Becker, Mr. Norcross informed him of the impending default on the January payment and inquired if they would allow the accompanying CD to be seized to satisfy the payment. *See Becker Deposition at 56.* Informed that seizure of the collateral was not acceptable, Mr. Norcross agreed on an allonge, whereby the January quarterly payment would be rescheduled for the end of the loan term. *See id. at 56-57.* On the due date,

²⁴ While unwilling to forfeit the security when asked during the Hong Kong meeting, it does appear that after the meeting Mr. Young consistently expressed a willingness to consider some form of forgiveness or to otherwise help relieve the debt burden in some manner, possibly by fundraising for the NPF. *See Young Deposition at 57-58, see also, Bolton Deposition Vol. 2, at 91, Letter from Young to Barbour of 6/28/96.* However, although the record is not clear on this issue, subsequent communications suggest that Mr. Young required some concomitant benefit before forgiving any portion of the loan obligation. *See Letter from R. Richards to Barbour of 9/17/96* (noting that forgiveness “was always contingent upon Mr. Young getting something in return that would justify this kind of a generous gift”) (emphasis in original), *but see, R. Richards Deposition Vol. 1, at 61-63* (testifying that this language in the letter refers only to generally enhanced business income that would ease the burden of default, and not to any expected commercial benefit resulting from his relationship with Mr. Barbour or the RNC.) What is clear is that at no time did Mr. Young in fact agree to allow a default on the Signet Bank loan and the consequent seizure of the posted collateral. *See, e.g., Letter from Chapman to Becker of 6/21/96* (noting requirement that loan obligation be honored, and possibility of assisting the RNC separately from loan transaction).

January 31st, both Mr. S. Richards and outside counsel for NPF informed the bank of the default and requested the rescheduling of the quarterly payment. *See* Internal Signet Bank Memorandum from Linwood to Bredin of 1/31/96. After preliminary inquiries by the lender, on approximately April 26th draft copies of the allonge documents were transmitted to all parties, including RNC counsel Thomas Josefiak.²⁵ *See* Facsimile from Bredin to Josefiak of 4/26/96. A few days later, on April 30, 1996, the allonge documents were executed by the NPF and Signet Bank, and the corresponding CD was reissued consistent with the new payment term. *See* "First Amendment To Credit And Security Agreement" dated April 30, 1996, *see also*, Memorandum from Lee to Wingo of 4/3/96. As with the draft documents, a copy of the executed allonge was provided to RNC counsel Josefiak. *See* Letter from Shuba to Bredin of 5/24/96.

6. Default

With all parties having agreed to a postponement of the first quarterly payment in 1996, the next payment came due on April 30th, the same day the allonge was executed. However, rather than make this payment, Mr. Barbour caused the NPF to unilaterally default on the balance of the loan – approximately \$1,584,398.92. *See* Bolton Deposition Vol. 2, at 66-68. Having failed to receive the April 30th payment, in approximately mid-May Signet Bank contacted the NPF regarding the delinquency and was informed of Mr. Barbour's decision not to make the

²⁵ While the reason for the two and a half month delay from when the bank was first informed of the allonge request to when the draft documents were prepared is not known, internal bank documents suggest that the lender had some reservations about the NPF's ability to repay the loan amount. In an undated internal memorandum, a Signet officer notes his concern that the RNC would not finance the NPF during the election year to the same extent it had in the past, thus restricting the NPF's ability to make the quarterly payments. *See* undated Memorandum from Bredin to Linwood. In a later communication granting the allonge, this same officer notes in support of the request that the allonge is being requested to allow the NPF "sufficient time" to negotiate a default of the collateral with the guarantor, and thus possible liquidation of the loan, and that the NPF has reduced its debt burden because the RNC does not "expect repayment from the NPF and has written off all notes from the NPF." *See* Internal Signet Memorandum from Bredin to File of 2/29/96.

payment, and told that the collateral should be seized. *See, e.g.*, undated Internal Signet Memorandum from Linwood to Bredin, *see also*, Barbour Deposition at 109-111. By letter dated June 4, 1996, Signet Bank provided YBD – USA sixty day notice of the default. *See* Letter from Bredin to Becker of 6/4/96. A copy of the letter was provided by certified mail to Mr. Josefiak, RNC counsel. In response, on June 6th Mr. R. Richards wrote Mr. Barbour at the RNC, treating the missed payment as another postponement and noting that, although Mr. Young is “still attempting to find a way to accommodate you with some degree of forgiveness,” he expects “the Committee” to honor the loan contract.²⁶ *See* Letter from R. Richards to Barbour of 6/6/96. Rather than responding directly, Mr. Barbour instructed John Bolton, Mr. Baroody’s successor as NPF President, to respond. *See* Letter from Bolton to R. Richards of 6/10/96. In his letter, Mr. Bolton clarifies that the missed payment is not merely a deferral, but a default, claiming the RNC is not a party to the loan agreement and as such “has no payment obligations under the agreement, and does not intend to make such payments.” *Id.*

Subsequent to these communications, on June 24th Mr. Becker contacted Mr. Norcross concerning the default. Mr. Norcross explained that Mr. Barbour had informed him that YBD – USA had authorized the seizure. *See* Becker Deposition at 64-65, *see also*, Letter from Becker to Norcross of 6/25/96. In response, Messrs. Young and Becker wrote both Mr. Barbour and RNC counsel clarifying the confusion, and unequivocally informing the recipients that a default had

²⁶ Mr. Richards has testified that at the time of his letter he was fully aware that the NPF intended to default on the loan, but sent the communication as a non-confrontational way of advising Mr. Barbour that Mr. Young expected full repayment of the loan. *See* R. Richards Deposition Vol. 1, at 41-42.

not been authorized.²⁷ Specifically, on June 25th Mr. Becker wrote Mr. Norcross clarifying that Mr. Young had not authorized the default, and reminding Mr. Norcross of Mr. Barbour's earlier promise to seek RNC authority to pay-off the debt should the NPF default on any Signet loan payments. *See* Letter from Becker to Norcross of 6/25/96 and Letter from Barbour to Becker of 8/30/94. Mr. Becker also notes Mr. Young's willingness to assist the RNC in some capacity, but informs Mr. Norcross that any "prospective assistance . . . must be subject to full satisfaction" of the loan. *Id.* On June 28th, Mr. Young wrote Mr. Barbour, noting that he agrees that the Signet loan should be "cleared for various reasons," that he is willing to assist the "Party" in raising funds, but that any such assistance "must remain separate" from the satisfaction of the loan. *See* Letter from Young to Barbour of 6/28/96. Again, rather than receiving a direct response from Mr. Barbour, Mr. R. Richards was contacted by Mr. Bolton seeking a meeting. *See* Letter from Bolton to R. Richards of 7/12/96. However, despite the meeting request, Mr. R. Richards was unable to reach Mr. Bolton. *See* R. Richards Deposition Vol. 1, at 46.

In an attempt to have the RNC rescue Mr. Young from the impending loss of the collateral resulting from the default, and in response to Mr. Barbour's original assurance that in the event of default the RNC would protect the collateral, on July 15th Mr. Becker again wrote Mr. Norcross requesting that Mr. Barbour seek the RNC's authorization at the upcoming

²⁷ The apparent confusion concerning Mr. Young's acquiescence to the seizure of the collateral stemmed from a conversation between Mr. R. Richards and Mr. Barbour. According to Mr. R. Richards, at some time during this period, Mr. Barbour informed him that he would "not spend hard dollars to pay-off this loan." *See* R. Richards Deposition Vol. 1, at 72, *see also*, Letter from R. Richards to Barbour of 9/17/96. In response, Mr. R. Richards informed Mr. Barbour that Mr. Young "cannot forgive it, therefore, if you are not going to pay it, you'll simply have to default . . . [w]e would be better off with you defaulting than us forgiving." *Id.* Mr. R. Richards further expressed his opinion that he "doubted Mr. Young would sue in the event of the default." *Id.* at 72-73. Mr. Barbour apparently understood Mr. R. Richards to be expressing Mr. Young's acquiescence to the default. In his testimony concerning these discussions, Mr. Barbour denies making the "hard dollar" statement, but does not otherwise testify to the apparent confusion. *See* Barbour Deposition at 128-140.

National Convention to have the party serve as the “sole guarantor” of the loan, thereby releasing the collateral. *See* Letter from Becker to Norcross of 7/15/96, *see also*, Letter from Barbour to Becker of 8/30/94. This request resulted from conversations with Mr. R. Richards, who, as a former RNC Chairman, believed the convention presented the perfect setting for the request as the full RNC leadership would be present. *See* Becker Deposition at 71-72. On June 29th, Mr. Norcross informed Mr. Becker that Mr. Bolton would submit the matter to the Budget Committee at the convention. *See* Letter from Norcross to Becker of 7/29/96.

Mr. Barbour failed to honor his original assurance to have the RNC protect the collateral. As noted above, rather than appear himself before the Budget Committee, Mr. Barbour asked Mr. Bolton to present the issue to the committee. *See* Bolton Deposition Vol. 2, at 81. Mr. Bolton requested that the committee authorize further RNC loans to the NPF to repay the Signet Bank loan, and, after his three minute presentation, left the room without action being taken. *See id.* at 82. Mr. R. Richards, who attended the convention, informed Mr. Becker that the request had been tabled by the Budget Committee, noting that never in his experience as RNC Chairman had he seen the Budget Committee deny a sitting Chairman’s request; the sitting Chairman has control over what issues are discussed, and which are tabled, at the Budget Committee meetings. *See* Becker Deposition at 72-73, and R. Richards Deposition Vol. 1, at 47-48. Therefore, it appears that had Mr. Barbour wanted the Budget Committee’s authorization, he would have received it.

In response, on August 29th Mr. Becker wrote Mr. Norcross, noting Mr. Young’s and his associates’ surprise at the refusal and Mr. Richards’ inability to reach Mr. Bolton to discuss the matter, and informing Mr. Norcross that he had been instructed to take “those steps necessary to protect YBD’s interests.” *See* Letter from Becker to Norcross of 8/29/96. In a final attempt to

amicably resolve the matter, both Messrs. Young and R. Richards attempted to contact Mr. Barbour. *See* Letter from Young to Barbour of 9/3/96, and Letter from R. Richards to Barbour of 9/17/96. However, these requests proved unsuccessful. Mr. Becker further requested that Mr. Norcross facilitate a meeting between Messrs. R. Richards and Barbour, but this too met without success. *See* Becker Deposition at 80.

During this period, Signet Bank called in the loan, due immediately, and notified Mr. Becker of its intent to seize the remaining collateral within ten days, should full payment not be received. *See* Letter from Shuba to Bolton of 9/11/96. A copy of the notice was provided to RNC counsel Josefiak. *See id.* On September 30th, Signet Bank seized the remaining collateral – totaling \$1,381,494.58. *See* Signet Bank Response of 9/12/97, at 2.

After the bank's seizure of the collateral, and in response to the various failed attempts to resolve the matter, Mr. R. Richards wrote Mr. Barbour on October 16th explaining that forfeiture of the loan guarantee would create "very adverse publicity" in light of the recent attention given the Clinton campaign's Indonesian contributions, and advising that, absent a response, "the matter will be left in the hands of Attorney Becker for resolution." *See* Letter from R. Richards to Barbour of 10/16/96. In response, Mr. Norcross was authorized, presumably by Mr. Barbour, to begin settlement negotiations with Mr. Becker. Between approximately October 16th and November 11th the parties came to an agreement whereby the RNC would loan the NPF the funds to pay YBD – USA approximately half the seized collateral amount – \$800,000. *See* Becker Deposition at 81-82. In his deposition testimony, Mr. Becker explains that Mr. Young accepted the settlement amount because he was informed by Mr. Norcross that \$800,000 was "the most Mr. Barbour [would] offer." *Id.* at 82-83.

On November 11th, Mr. Becker formally proposed to Mr. Barbour the settlement terms reached with Mr. Norcross. *See* Letter from Becker to Barbour of 11/11/96. Mr. Becker's proposal anticipated settlement by November 22. *See id.* In response, on November 15th Mr. Becker received a proposed settlement agreement from the law firm of Blank, Rome, Comisky & McCauley ("Blank – Rome"). *See* Facsimile from Fry to Becker of 11/15/96. However, the proposed settlement agreement omitted any mention of the NPF's default on the loan and subsequent seizure of the collateral. *See id.* In response, Mr. Becker proposed language addressing the default. *See id.* On November 21st, Blank – Rome provided Mr. Becker for signature an amended agreement consistent with his proposed language. *See* Letter from Fry to Becker of 11/21/96. In anticipation of settlement, the RNC transferred approximately \$745,000 to the NPF, and arrangements were made by Mr. Young's associates for receipt of the settlement funds.²⁸ *See, e.g.,* Memorandum from Jaskulski to Banning of 11/20/96, *see also*, Letter from Young to Becker of 11/21/96. With all the arrangements in place, Mr. Becker returned a signed copy of the agreement. *See* Letter from Becker to Young of 11/25/96. However, settlement was not reached.

Mr. Bolton explains in his testimony that he objected to the proposed agreement, and requested language addressing NPF's belief that Mr. Young had authorized the seizure of the collateral. *See* Bolton Deposition Vol. 2, at 110. Accordingly, on December 20th Mr. Becker was provided with an amended settlement agreement incorporating Mr. Bolton's concerns. *See* Memorandum from Becker to Barbour and Bolton of 12/23/96. In response, Mr. Becker objected to the new language, suggesting a new agreement or execution of the previously

²⁸ The settlement amount was reduced by the amount of accrued interest paid by Signet Bank to Mr. Young after the default on the collateral CD's – approximately \$55,460.09. *See* Letter from Bredin to Becker of 11/14/96.

proposed agreement. *See id.* Between December 26th and January 17, 1997, the parties agreed to language addressing the apparent misunderstanding concerning Mr. Young's acquiescence to the default. *See* Mutual Release between NPF and YBD – USA of 1/19/97.²⁹ However, Mr. Bolton refused to sign this proposal also, because it did not include the language he proposed. *See* Bolton Deposition Vol. 2, at 111-112. Consequently, Mr. Barbour was forced to execute the agreement instead. Mr. Bolton did, however, sign the NPF check to YBD – USA because Mr. Barbour did not have signature authority. *Id.* at 113-114.³⁰ On January 29, 1997, after the NPF check cleared, YBD – USA wire transferred the \$745,000 to its original source, YBD – Hong Kong.

C. Violation

The available evidence demonstrates Mr. Barbour's direct and extensive involvement in all aspects of the loan guarantee transaction, from procuring the guarantee to reaching settlement with the guarantor after default. Despite Mr. Barbour's testimony to the contrary, the weight of the evidence shows that throughout this involvement Mr. Barbour was consistently informed of the foreign source of the collateral. Because of the then NPF President's resistance to seeking foreign funding, at the beginning of the 1994 election year Mr. Barbour unilaterally hired Mr. Denning for this specific task. Mr. Denning in concert with Mr. Barbour's trusted confidant, Mr. Fierce, retained a third individual capable of tapping this source of funding, Mr. Volcansek. Both Messrs. Denning and Fierce reported directly to Mr. Barbour and appear to have taken

²⁹ It appears that YBD – USA also provided Mr. Barbour a close-out letter as part of the settlement stating that the RNC was not a party to either the loan transaction or the settlement agreement. This letter was prepared with the involvement of RNC staff. *See* Memorandum from McAllister to Becker of 12/19/96.

³⁰ In fact, Mr. Bolton had resigned his position at NPF effective December 31, 1996, but the signature authority had not yet been changed. *See* Bolton Deposition Vol. 2, at 113-114 and 116.

direction from him. Moreover, the evidence demonstrates that it was Mr. Fierce who not only defined the electoral purpose behind this effort, but who also first suggested that foreign sources be solicited and who, in part, choose Mr. Young as a target of the solicitations. Accordingly, it appears that even before Mr. Young was solicited for the collateral, Mr. Barbour knew that the collateral would be coming from a foreign source.

Once Mr. Young was contacted, Mr. Barbour was directly and explicitly informed that the solicited collateral would originate from a foreign source. Indeed, the evidence shows that Mr. Barbour was explicitly informed of the foreign source of the collateral on at least four separate occasions: by Mr. Young at the August 1994 dinner, by Mr. R. Richards upon Mr. Young's agreement to provide the collateral, by Mr. Volcansek prior to the loan being finalized, and again by Mr. Young during the collateral forfeiture request in Hong Kong. Moreover, Mr. Barbour was informed by Mr. Denning of Mr. Young's potential foreign national status. In fact, Mr. Barbour acknowledges being informed that Mr. Young was potentially a foreign national; yet he never attempted to clarify Mr. Young's citizenship status or to determine the source of the collateral funds.

Although Mr. Barbour had concurrent positions with both the NPF and the RNC, there is no question that his involvement in the loan collateral transaction was principally as Chairman of the RNC. The express purpose of the loan guarantee was to allow the RNC to recoup funds loaned to the NPF in time for their use in the 1994 elections. This purpose is reflected not only in various individuals' testimony, but also in the numerous communications, many conducted directly by Mr. Barbour, between RNC officials and representatives of Mr. Young, and in the Signet Bank loan agreement which specifically designated \$1.6 million of loan proceeds for repayment of the RNC debt. Not surprisingly, the various events at issue correspond with

national election periods: the solicitations began in the summer of 1994, a mid-term election year holding great promise for Republican victories; during 1995, a non-election year, Mr. Barbour consistently authorized the RNC loans necessary for the NPF to satisfy the quarterly loan repayments; however, at the very beginning of 1996, another election year, Mr. Barbour caused the NPF to default on the loan. This pattern is further evidence that the loan transaction was for the benefit of, and orchestrated by, the RNC.

The above evidence clearly establishes Mr. Barbour's knowing and willful violation of the Act's foreign national prohibition. As previously noted, as an individual with broad political experience at the highest levels of national politics, Mr. Barbour is well versed in campaign finance law. Despite this knowledge, Mr. Barbour directly solicited a foreign national for funds he knew to be from a foreign source. Respondent was unequivocally informed of the foreign source of the collateral on at least four occasions. These funds were consistently and explicitly solicited to provide the RNC additional funds for use in the 1994 elections. As RNC chairman, Mr. Barbour was also the individual primarily responsible for authorizing the RNC's indirect repayment of the commercial loan secured with the solicited foreign collateral by means of loans to the NPF, as well as the individual responsible for ceasing repayment of the loan, resulting in the default of the commercial loan and the seizure of the remaining collateral.

For purposes of the foreign national prohibition, a contribution is defined to include all loans, and a loan is defined to include all guarantees, and any other form of security, equal to that portion of the amount of the loan for which the guarantor agreed to be liable in a written agreement. *See* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.7(a)(1)(i). Accordingly, because Mr. Young provided collateral for the full amount of the loan, the collateral provided through YBD – USA constituted a contribution for the full amount of the loan proceeds transferred to the

RNC -- \$1.6 million. Moreover, both Mr. Young, the individual with ultimate decision-making authority concerning the provision of the requested collateral, and YBD -- Hong Kong, the source of the collateral funds, are inarguably foreign nationals. *See* 2 U.S.C. § 441e(b)(1) and (2); 22 U.S.C. § 611(b). The use of the domestic subsidiary, YBD -- USA, as a conduit for the collateral transaction does not negate the foreign source of the funds. *See* 11 C.F.R. § 110.4(a)(3), *see also*, A.O.'s 1989-20, 1981-36, 1985-3 and 1984-10.

The Act prohibits any person, such as Mr. Barbour, from soliciting, accepting or receiving contributions from foreign nationals. *See* 2 U.S.C. § 441e(a), 11 C.F.R. § 110.4(a). By directly and systematically soliciting collateral from a foreign national, and by accepting the proceeds of a loan he knew to be guaranteed with foreign national funds, Mr. Barbour violated the Act's prohibition on foreign national contributions.

Finally, "[k]nowing and willful" actions are those that are "taken with full knowledge of all the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). As established from the evidence, Mr. Barbour's direct and extensive involvement in all aspects of the loan transaction provided Respondent with early and reliable knowledge of the collateral's foreign source. Moreover, as an attorney with vast political experience Mr. Barbour knew of the foreign national prohibition, a prominent component of campaign finance law. Despite this knowledge, Mr. Barbour accepted \$1.6 million in loan proceeds -- in knowing and willful violation of the foreign national prohibition. *See* FEC v. John A. Dramesi for Congress, 640 F.Supp. 985 (D.N.J. 1986) (the knowing and willful standard requires knowledge that one is violating the law).

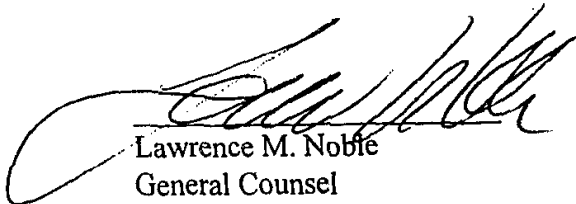
III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Haley R. Barbour knowingly and willfully violated

2 U.S.C. § 441e.

Date

12/21/98


Lawrence M. Noble
General Counsel

2025-01-03 10:00